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CURRENT TOPICS

Poor Persons' Defence: Fees

ONE of the grosser injustices to which the legal profession has been subject for a long time past in respect of their remuneration has been the very nominal fee which has been available for the defence of poor persons on criminal charges. A little publicity was given some time ago to the fact that the maximum total fee for counsel defending in a case lasting several weeks might be eleven guineas. On 30th July, 1953, the HOME SECRETARY announced in the Commons that the General Council of the Bar and The Law Society had represented that the present fees were inadequate and had asked that the provisions of ss. 21 to 23 of the Legal Aid and Advice Act, 1949, should be brought into force. The Government, he said, would not at present feel justified in bringing these provisions into force, but recognised that a case had been made for an increase in the existing fees. He had decided as a temporary measure to increase the existing fees under the existing Acts by 50 per cent., and also to provide, where a trial lasts for more than two full days at quarter sessions or assizes, for the payment of a daily fee after the second day of seven guineas to leading counsel, five guineas to junior counsel, and four guineas to solicitors. The associations of local authorities have agreed on behalf of the local authorities, on whom the cost of legal aid now falls, to these proposals, and the necessary amending regulations will be made as soon as possible.

Investment Trusts and Capital Issues

IN a letter to the Capital Issues Committee referred to by the CHANCELLOR OF THE EXCHEQUER in the Commons on 29th July, 1953, the Chancellor suggests that the time has come when some departure from policy is desirable, "having in mind the part played by the investment trusts in the supply of risk-bearing capital for industry and the need to encourage savings at the present time." The committee is asked "to feel free, in appropriate cases, in future to recommend consent to applications to raise fresh capital beyond the general permissive limit of £50,000 in any one period of twelve months." The service of investment and unit trusts in directing the flow of savings into capital investment is well known to solicitors, who will welcome the removal of this serious obstacle to the free movement of capital. It is to be hoped that the committee will carry out the Chancellor's policy in a liberal spirit.

Prices of Houses

AN "Occasional Bulletin" (No. 5, July, 1953) issued by the Co-operative Permanent Building Society quotes from the Report on Building Societies by the Chief Registrar of Friendly Societies that, whilst other thrift institutions were experiencing difficulties in attracting savings, share subscriptions received by building societies during 1952 were a record for the movement at £235·8m., and by the end of the year shareholders' balances totalled £1,177m., also a record. A table showing the progress made since 1938 gives

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the figure of £77,583 received in subscriptions in that year and £235,795 in 1952; £137,020 was advanced on mortgage in 1938 and £267,556 in 1952. The total assets of the building society movement rose from £759m. in 1938 to £1,470m. in 1952. The Bulletin contains valuable charts and graphs, one of the most interesting being a graph of the indices of the prices of houses sold with vacant possession and house building costs in Great Britain. Taking 1939 as the basic year, in which costs are taken to be 100, they rose gradually from about 225 in January, 1947, to about 265 in January, 1951, and thence steeply to 335 in March, 1952, since when there has been a slight fall. The price of houses sold for over £2,500 rose from 235 in January, 1947, to nearly 300 in January, 1948, where it stayed for about six months, then dipped to 290 where it remained until the end of 1949, when it rose suddenly to 300, and then rose to about 345 in about October, 1951, after which it declined to about 315, where it stands at the present day. From this it would seem that the larger number of new houses now being built have not yet influenced prices of existing houses very much.

Pneumoconiosis: Proposed Legislation

In a written reply given by the Minister of National Insurance on 26th July, he stated that the discussions on the provision of benefit for men partially disabled by pneumoconiosis who have failed to qualify for compensation had reached a stage where he was satisfied that a scheme for providing a flat rate benefit for these men on the general lines of those existing for total cases would be practicable. He thought that there might be as many as 15,000 who would benefit, of whom about half would be in Wales and one-third in England. He hoped before long to complete the preliminary work and clear the way for the introduction of the necessary legislation extending the scope of the Pneumoconiosis and Byssinosis Benefit Act, 1951. The men who would be covered by the suggested benefits would be those who contracted pneumoconiosis from employment before 5th July, 1948, when the Industrial Injuries Scheme came into operation, and who have been unable to obtain compensation under the former Workmen's Compensation Acts owing to the time limits therein imposed.

Police Duties

Shortages in manpower and increases in crime led to the appointment in August, 1950, of the Committee on Police Extraneous Duties. The committee, whose report was published on 27th July, recommend that complete uniformity is undesirable and police authorities should be left a wide discretion to choose what extra duties they should perform. In general, it is stated, the amount of police time spent on extra duties is not great. The total manpower involved throughout England and Wales is roughly equal to 500 men, including some 160 employed whole-time, or under 1 per cent. of the total strength of the police forces. Each force it is proposed, should undertake a thorough review at an early date of the extra duties which they undertake, and a fair estimate should be made of the cost where it is decided that some duties should continue. They recommend enactment by statute that the police may not be employed on extraneous duties except such as may be approved by the police authority and have not been prohibited by the Home Secretary, whose power of prohibition would be exercised by Police Regulations. They further recommend that the Home Secretary should be empowered to approve in certain circumstances, at the request of the police authority, the undertaking by the police of any duty which would not normally be allowed. Duties which the committee finds unjustifiable are (*inter alia*) bill-posting under the Licensing Acts, delivering notices under the Weights and Measures Act, duties arising out of the Petroleum Act, menial and ceremonial duties connected with civic activities of local authorities, and the supervision of sheep-dipping.

Mr. Richard Sandford

Congratulations to Mr. Richard Sandford, solicitor, of Udlington, near Shrewsbury, on the celebration of his ninetieth birthday on 1st August, 1953, will be the heartier because he still carries out his duties as clerk to the Albrighton Magistrates at Shrewsbury. Mr. Sandford is a descendant of the Reverend Humphrey Sandford, who was sworn in as a Freeman in 1819, and, on 30th July, Mr. Sandford was present when another descendant of the Rev. Humphrey Sandford, and a son of Brigadier Francis Sandford, of Exeter, an honorary physician to the Queen, was sworn in as a Freeman of Shrewsbury, his father having been sworn in in 1927.

A "Cool" Client

Criminological research might well be devoted to the study of a case brought to our notice by the London *Evening News* of 17th July, 1953. He is described by the police as "the cool client," and the newspaper describes him as a "genteel man who visits solicitors' offices in the guise of a client and walks off with the cash." His method is to call during the lunch hour when it is almost certain to be difficult to find the partners. While the staff looks for the partners, he looks for the cash. He has scored successes in Lowestoft, Yarmouth and other East Anglian towns. The description, "tall, well-dressed and smooth-tongued," given in the news item could hardly be sufficient for identification purposes, or even for the purpose of distinguishing the client from the solicitor himself, who, if he is an advocate, may derive his livelihood from being smooth-tongued, and is not infrequently tall and well-dressed. The interest of the case, apart from the warning to solicitors to be prepared, is that the cool criminal who does not need to resort to violence, and who has the wit to think of easy money schemes and the confidence to carry them through, exists outside fiction. If this example chances to read these fair words about himself and perceives what a high opinion we have of his powers, perhaps he will take our advice and submit himself for examination by the nearest criminologist before circumstances oblige him to do so.

The Advocate's "We"

It is part of the duty of an advocate to identify himself with his client, at any rate within the limits set by the maxim that he who is his own lawyer has a fool for a client. Laymen are usually, therefore, pleased rather than surprised to hear advocates using the pronoun "we" instead of the more accurate "my client" in courts high and low. A solicitor for a party to an assault case in the Sheffield Magistrates' Court is reported in the *Sheffield Star* a few weeks ago to have told the court, "We are prepared to be bound over if we can get peace in the yard." "You don't live in the yard, do you?" the chairman of the bench asked, but on binding over the parties he was surprised by the solicitor's request for his personal discharge from the case. The moral seems to be that, if defending solicitors use the legal "we," the bench should appreciate that this identification of the solicitor with the client is the result of the submergence of the solicitor's separate personality and not of any association between the solicitor and his client.

Taxation

THREE REVENUE DECISIONS

What is a Settlement?

It will be recalled that before 1936 it became a fashionable thing for a parent to settle property or money on his infant children so that the income arising thereon would be theirs and not his, and so that they could, in effect, pay for their own education, etc., out of such income, which would bear a lower amount of income tax and sur-tax than would have been the case if the parent had retained it. This was ended by the Finance Act, 1936, s. 21 (now the Income Tax Act, 1952, ss. 393 *et seq.*). Further provisions directed to broadly the same end were enacted in the Finance Act, 1938, s. 38 (now the Income Tax Act, 1952, ss. 404–406). The effect of these sections has been considered from time to time in previous articles and it will suffice to remind readers that the general result is that, in the case of a settlement by a parent on his child, any income paid to or for the benefit of the child during any year of assessment at the commencement of which the child was an unmarried infant falls to be treated as the income of the settlor and not of the child. It is further provided that unless a settlement is "irrevocable" all accumulations of income shall similarly be treated as the income of the settlor. In practice, the provisions as to irrevocability are largely superseded by the 1938 Act, but the two are cumulative in their effects.

Section 21 (9) (*b*) (now the Income Tax Act, 1952, s. 403) provided that the expression "settlement" includes "any disposition, trust, covenant, agreement, arrangement or transfer of assets," whilst s. 41 (4) (*b*) of the 1938 Act provided a similar definition for its purposes, but in this case the words "transfer of assets" did not appear. The first reported case in which it fell directly to be decided what was or was not within the ambit of the 1936 Act was *Hood-Barrs* v. *Inland Revenue Commissioners* [1947] W.N. 12; 176 L.T. 283. There the transaction took the form of a transfer of shares from a father to his two infant unmarried daughters and it was held that this was within the definition. The next case was *Yates* v. *Starkey* [1951] 1 Ch. 45; on appeal [1951] 1 Ch. 465; this was rather a peculiar case in that the Crown were arguing against the application of s. 21. A respondent in a divorce suit had been ordered by the court to pay to his wife the annual sum of £100 less tax in trust for each of the three children of the marriage. The wife had preferred repayment claims on their behalf as their guardian and, indeed, the repayments had been made; the husband then claimed that the order created a trust in favour of the children and was a settlement within the meaning and effect of s. 21 so that the income remained his and he was entitled under the Finance Act, 1920, s. 21 (now the Income Tax Act, 1952, s. 212) to claim the reliefs. It was held that it was within the section and the husband, as the person who provided the funds, was the settlor and was entitled to the repayments.

There have also been decisions, interesting in themselves, on the ambit of s. 38 of the Act of 1938. Such are *Inland Revenue Commissioners* v. *Morton* [1941] S.C. 467; *Chamberlain* v. *Inland Revenue Commissioners* [1943] W.N. 149; 59 T.L.R. 343; and *Vestey's Executors* v. *Inland Revenue Commissioners* [1949] W.N. 233; 1 All E.R. 1108. All these were concerned with complicated transactions involving the formation of companies, and in each case it was held that the transactions did constitute settlements within the 1938 Act definition; the real question at issue in each of them was not so much whether there was a settlement at all, but rather what was the property comprised in it.

The latest case, *Thomas* v. *Marshall* [1953] 2 W.L.R. 944; *ante*, p. 316, was a striking one. The facts may be taken from the speech of Lord Morton, at 2 W.L.R. 945: "On 20th December, 1933, a Post Office Savings Bank account was opened by or on behalf of the appellant in the name of Michael [his son] (born 8th September, 1933) with a deposit of £50 and on 28th May, 1936, another Post Office Savings Bank account was opened by or on behalf of the appellant in the name of Heather [his daughter] (born 1st February, 1936) with a deposit of £50. Thereafter the appellant paid further sums into the same bank for each of his children. Various sums were drawn from the accounts from time to time and were expended for the children's benefit. On 31st December, 1948, Michael's account was in credit £844 9s. and Heather's account was in credit £844 8s. 3d. In the year 1945 the appellant bought £1,000 3 per cent. Defence Bonds for each of the two children. All the sums paid into the children's bank accounts, and the said Defence Bonds, were absolute and unconditional gifts made by the appellant to his children."

The Crown contended that these transactions amounted to a "transfer of assets" within s. 21 so that the income from them remained the income of the settlor. The taxpayer contended that as the word "settlement" was the only word used in the charging provision it was the dominant word, so that the transaction could not come within s. 21 unless it was something in the nature of a settlement rather than an absolute gift. Support for this argument was also sought from the well known decision of *St. Aubyn* v. *A.-G.* [1952] A.C. 15, where Lord Simonds and Lord Normand held that a payment in cash to a company for the issue of preference shares was not a "transfer of any property" within the meaning of the Finance Act, 1940, s. 46.

The Special Commissioners, Donovan, J., and the Court of Appeal were all bound by *Hood-Barrs* v. *Inland Revenue Commissioners*, *supra*, although valiant attempts were made to convince the Court of Appeal that that case had been impliedly overruled by the above-mentioned cases decided on the 1938 Act. The House of Lords were not so bound, but had no hesitation in approving *Hood-Barrs* v. *Inland Revenue Commissioners* and deciding that the transactions were within the section. Hence there is now no shadow of doubt that a gift by a parent to his infant child is within the section and the income arising thereon will be that of the parent for income tax and sur-tax purposes. It may be some little comfort to observe that no action is to be taken if the annual amount of the income does not exceed £5 (subs. (4)). As was emphasised by counsel for the taxpayer: "It may be a matter of great difficulty to determine, in certain cases, whether income is paid to or for the benefit of a child of the settlor 'by virtue or in consequence' of such a gift. For example, said counsel, if a father gives his child a motor-car or jewellery, and the child sells the gift and invests the proceeds, is the income from the investment paid to the child 'by virtue or in consequence of' the gift or is it paid to him or her in consequence of the sale of an asset which belonged absolutely to the child?" (*per* Lord Morton, at p. 948). As his lordship said, in such cases it will be for the Commissioners to make a finding on the facts of each case that may arise.

Income Tax on Foreign Employment

In *Foulsham* v. *Pickles* [1925] A.C. 458 the House of Lords decided that where the taxpayer is employed abroad for nearly the whole of each year, but is so employed under a contract of service with an English company and is paid by remittance into his banking account in England, his employment is not wholly out of England, so that his emoluments are not taxable under Sched. D, Case V, but rather under Sched. D, Case II. In that particular case the Crown had insisted on taxation under Case V, and when the matter was decided against them asked that the case might be referred to the Special Commissioners in order that they might raise an alternative assessment under Case II: this the House of Lords refused to do, but there is no doubt that the emoluments would be so taxable.

In *Bennett* v. *Marshall* [1938] 1 K.B. 591 the Court of Appeal was concerned with the converse case: here the taxpayer performed his duties in England, but under contract with a foreign company which paid his remuneration into a foreign banking account. It was held, following *Foulsham* v. *Pickles*, *supra*, that in this case the emoluments were taxable under Sched. D, Case V, and not Case II, so that the assessment was on such part only of the income as was remitted to this country. That decision stood unchallenged until last year, when the Crown determined to test *Bennett* v. *Marshall* in the House of Lords. It may be noticed in passing that *Re Duke of Norfolk's Will Trusts* [1950] Ch. 467 was another case, this time of estate duty, where the Crown sought to disturb long-standing practice. In the event, in the two consolidated appeals of *Bray* v. *Colenbrander* and *Harvey* v. *Breyfogle* [1953] 2 W.L.R. 927; *ante*, p. 316, the House of Lords affirmed *Bennett* v. *Marshall* for the same reasons as that case was decided upon in the Court of Appeal, so the law remains unchanged.

What is interesting is that in his speech Lord Normand considered what the House ought to have done if it had come to the contrary conclusion: he wondered whether the maxim *communis error facit jus* might not apply to Revenue cases. It is well known that, where there is a long-standing authority which has been consistently acted upon so that rights of property have been settled in reliance on it, a superior court will often refuse to overrule it even though considering it to be ill-founded. Lord Normand said, at p. 931: "In 1938 *Bennett* v. *Marshall* was decided, leave was obtained to appeal to this House, but nothing followed on that. In the successive Finance Acts between 1938 and 1950, when the assessments in the present case were, I think, made, the Inland Revenue could have laid before Parliament a clause to make it clear for the future that the place where the employee performed his duties was a relevant circumstance in considering the locality of his employment. Nothing was done. But now this appeal is taken and if it had succeeded it would have rendered a number of taxpayers liable to additional assessments going back six years. In the interval between 1938 and 1950 many people must, I should think, have entered into contracts of employment with a tract of future time in the faith that the place of payment of their salary was conclusive. . . ."

The other learned lords refused to express any opinion on the matter, which had not been argued before them, but the suggestion is one which gives rise to a number of interesting speculations. The appeals also give rise to another thought. In this matter the Crown pursued the taxpayer through three courts and was ordered to pay costs in each one; indeed, leave to appeal to the House of Lords was, it is understood, only granted on the footing that the Crown would not seek to recover costs. Now all those costs are paid by the long-suffering taxpayer and one cannot but wonder at the comparative costs of that performance and of, as Lord Normand suggested was possible, inserting a clause in a Finance Bill. True, if this had been done the effect would not have been retrospective (in practice for six years) as would have been the case if the House of Lords had held *Bennett* v. *Marshall* to have been wrongly decided—but is it to the credit of the Revenue authorities to desire to bring about such retrospective effects?

A Newly Discovered Charity

Inland Revenue Commissioners v. *City of London* [1953] 1 W.L.R. 652; *ante*, p. 315, is not an important case and does not call for close comment or examination. But its facts are perhaps sufficiently out of the ordinary to merit a few lines on the score of general interest. Briefly, in the 1870's the corporation of the City of London were anxious to see Epping Forest preserved as an open space for the public benefit. Accordingly a private Act was procured whereby the corporation were constituted conservators of the forest, and it was not disputed that as such they were a separate entity. It was provided by the Act that the corporation as such would contribute from time to time such sums of money as might be necessary for the proper conservation of the forest, and in fact they did so from year to year by making good any deficiency in the income of the conservators. The annual deficiency tended to increase over the years, particularly in later years, and in the year 1948–49 amounted to some £16,000. Up to then the amount required had always been paid over in full, but in that year, for the first time, the corporation contended that the contribution was an "annual payment" within r. 1 of Sched. D, Case III, and by r. 19 (1) of the All Schedules Rules tax should be deducted therefrom; it also contended that the conservators were a charity and entitled to repayment of the sum so deducted.

Suffice it to say that both contentions were upheld in the House of Lords and the corporation thereby saved themselves £7,202 15s. 6d. at the expense of the Exchequer, and this, as has been said, after paying the deficiency in full for nearly seventy years.

G. B. G.

A Conveyancer's Diary

INHERITANCE ACT: TIME FOR DETERMINING REASONABLENESS OF PROVISION

The foundation of the jurisdiction to order provision for the maintenance of a dependant out of the deceased's estate under the Inheritance (Family Provision) Act, 1938, is a finding to the effect that the deceased, in the opinion of the court, did not make reasonable provision for the maintenance of the dependant (s. 1 (1)). The fundamental nature of this part of the Act has caused it to be examined at least as often as any other part of the Act, and the body of reported authority on it is considerable. Nevertheless, as the recent decision in *Re Howell* [1953] 1 W.L.R. 1034 (also reported shortly at p. 523, *ante*) shows, new points continue to arise even on this provision.

In this case the testator died in 1950. He was twice married. By his first wife, whom he divorced in 1947, he had two children who were infants at his death, and of whom the custody had been awarded to him; they were, consequently, living with the testator and the testator's second wife when the testator died. The testator left the whole of his estate, valued at approximately £2,500, to his second wife. So far as can be gathered from the reports of this case, it was agreed on all sides that, as matters must have appeared to the testator at the time of his death, this was a reasonable provision, or rather, since the application was made on behalf of the children and it is necessary to look at the reasonableness of the provision made for any dependant from the point of view of that dependant, it was not unreasonable on the part of the testator to make no direct provision for the children. The court, apparently, accepted the argument of counsel for the second wife, who put his case this way: the estate being small and not susceptible of division between several beneficiaries, the only adequate provision which the testator could make for his dependants was by securing (as he did) that there was a home in which his second wife could live, it being the fact, and known to him to be the fact, that she would make provision for the children and would look after them as she had been doing for some little time before he made his will.

If, therefore, there had been no change in circumstances after the testator's death, it would have been impossible, as I read this decision, to contend with any hope of success that the will did not make reasonable provision for the children, although they received no direct benefit thereunder. But circumstances did change, to the disadvantage of all the testator's dependants, in that the second wife fell ill and became, because of her health, unemployable. One result of her ill health was that she could no longer look after the children, who went to live with their mother, the testator's first wife. But the latter was also in poor circumstances and unable to support the children without assistance, and the consequence of this state of affairs was an application on behalf of the children that reasonable provision might be made for their maintenance out of the testator's estate.

The question of general interest discussed in this case was whether the reasonableness or otherwise of the provision made by the will was a matter to be determined in the light of the circumstances existing at the time of the death, or whether events subsequent thereto could be looked at in reaching a conclusion on this question. The Court of Appeal, affirming the decision of Roxburgh, J., below, held that the former was the right approach to this problem. The leading judgment in this case is that of Sir Raymond Evershed, M.R., who first referred to a passage from the judgment of Morton, J. (as he then was), in *Re Styler* [1942] Ch. 387. Those were the early days of the Act, and there were evidently some misconceptions about its application prevalent at the time, for that learned judge found it necessary to say that the judge should not interfere with a testator's dispositions merely because he thinks that he would have been inclined, if he had been in the position of the testator, to make provision for some particular person; the court had to find that it was unreasonable on the part of the testator to make no provision for the person in question, or that it was unreasonable not to make a larger provision.

That view of the Act, as the Master of the Rolls observed in the present case, had been consistently acted on since, and should be followed; and he went on as follows ([1953] 1 W.L.R., at p. 1038): "The question then is: in making this will, did the testator make unreasonable provision for these children? The matter could equally well be put: was the series of dispositions unwarranted in the circumstances as they presented, or should have presented, themselves to the testator at the moment of his death? For I think, *prima facie*, at any rate, that it must be right to judge this matter, whether the testator was unreasonable, in the light of the circumstances which did present, or should have presented, themselves to him up to the moment of his death. No doubt the circumstances must include eventualities reasonably to be foreseen, but the testator ought not to be judged exclusively in the light of circumstances happening after his death, which might very much have altered the situation."

This is an important expression of judicial opinion, and it is somewhat surprising that it is not intended, apparently, to include the case in the Law Reports. It is true that the number of cases in which this question of the time at which the reasonableness of the deceased's dispositions must be judged is never likely to be very large, because of the time limit of six months from the date of the grant of representation within which applications under the Act have to be made; but delay either in obtaining a grant, or in getting the summons on for hearing, or in both these matters, can quite easily result in an interval of something like two years and, of course, sometimes more, occurring between the dates of the death and of the hearing, and that is time enough for a catastrophic change in circumstances to take place. If that is the reason for omitting a full report of the case from the Law Reports, it seems to me to be ill founded.

In the particular circumstances of this case this decision, if I may say so, seems to me to be eminently reasonable and undoubtedly right. But that is not to say that it is necessarily without difficulties for the future. In reaching its conclusion the Court of Appeal in this case did not examine any part of the Act other than s. 1 (1). But there are other subsections of s. 1 which may well have a bearing in cases similar to this one, the relation of which to this decision (and indeed to each other) is not very clear.

These provisions are subss. (5), (6) and (7) of s. 1. Subsection (5) provides that in determining whether provision for maintenance should be made, and if so in what way and as from what date, the court shall have regard to the nature of the property representing the estate and shall not order any provision which would necessitate an improvident realisation. Subsection (6) provides that the court shall, on an application, have regard to any past, present or future capital or income from any source of the dependant, to the conduct of the dependant in relation to the deceased or otherwise, and to any other matter which the court may consider relevant in relation to the dependant, to the beneficiaries under the will, or otherwise. And subs. (7) provides that the court shall also, on any application, have regard to the deceased's reasons, so far as ascertainable, for not making any provision or any further provision for the dependant in question, and may accept such evidence of those reasons as it considers sufficient, including any statement in writing signed by the testator and dated.

Taking these three subsections one by one in relation to the Master of the Rolls' observation that "the testator ought not to be judged exclusively in the light of circumstances happening after his death, which might very much have altered the situation," there is no difficulty in regard to subs. (7). The reasons of the deceased for his actions (or, since the Act now applies also to cases of intestacy, his inaction) in relation to a particular dependant must be reasons arrived at "in the light of the circumstances which did present, or should have presented, themselves to him up

to the moment of his death." But this is not, or at any rate may not be, so in regard to the other subsections. In having regard to the nature of the property representing the estate, from the point of view of whether a sale of that property would be improvident or not, a posthumous change in the annual value of the property seems to be within the provision, unless the whole scope of the section is to be narrowly restricted by confining its operation to property which, by its nature, tends to fluctuate or diminish in value, and that does not appear to be a necessary or a reasonable construction to put on this provision. But the most obviously difficult of all these provisions to reconcile with some at least of the *dicta* in the present case is subs. (6). It would be absurd if the court could not, under this provision, take into account some financial windfall like a prize in a football pool to which a dependant should succeed between the dates of the death and the hearing; but this is a circumstance which happens "exclusively after the death." The conduct of the dependant in relation to the testator or otherwise is another relevant factor. As far as conduct in relation to the testator is concerned, this is doubtless something which must have taken place before the death (although the evidence of it may come to light thereafter), but the subsection, in speaking of conduct otherwise than in relation to the testator, seems to include every kind of conduct, perhaps as a guide to the character of the dependant and the propriety of his or her application, and here again to restrict the operation of this provision to the occurrences of a particular period, which for this purpose must be an arbitrary period, seems to be an unnecessary restriction on a provision which appears to have been framed in deliberately wide terms. These problems, which will clearly have to be resolved one day, are really all aspects of the same problem. The Act confers, in terms, the widest kind of discretion on the court. But the Act also sets certain limits to that discretion. In exercising the discretion, the court must therefore always be conscious of these limits, but in seeking to define them it runs the danger of fettering its discretion in a manner which is not, at first sight, justified by the wide terms of the Act. It is a pretty dilemma.

"A B C"

Landlord and Tenant Notebook

TRANSMISSION OF CONTROLLED TENANCY: THE RESIDENTIAL QUALIFICATION

THE provision in s. 12 (1) (*g*) (application and interpretation) of the Increase of Rent, etc. (Restrictions) Act, 1920, extending protection to members of the deceased tenant's family has grown in importance since the famous decision in *Moodie* v. *Hosegood* [1952] A.C. 61, and one decision which deserves to be better known is that of the Court of Appeal in *Edmunds* v. *Jones*, reported in the *Law Times* of 1st February, 1952: 213 L.T. News. 62.

The paragraph (as amended) runs: "... and the expression 'tenant' includes the widow of a tenant who was residing with him at the time of his death, or, where a tenant leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court." The issue in *Edmunds* v. *Jones* turned on the meaning of "residing with," the facts being as follows.

The plaintiff claimed possession of a house within the Acts which had been let to a tenant who had died. The tenant had sub-let two rooms to the defendant, her daughter, the kitchen being shared. Possibly because the sharing excluded her from the protection of the Acts dealing with premises let unfurnished (see, as to importance of a kitchen, 96 SOL. J. 275), the daughter put forward a claim to a transmitted tenancy of the whole house.

"Residing with," it was held, must be given its "ordinary popular significance." "In order that para. (*g*) might be satisfied, the person claiming to succeed to the tenancy of the particular premises must fairly and truly be said to have been residing with the predecessor in the sense that the successor lived in and shared for living purposes the whole of the premises to which that person claims to have succeeded, having been a member of the household of the predecessor *qua* the particular house."

The interpretation is consistent with the line taken in such cases as *Baker* v. *Lewis* [1947] K.B. 186, in which Morton, L.J., came down heavily on the side of giving expressions used in these Acts their "ordinary popular significance," refusing to read the word "purchasing" in para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933 ("... has become landlord by purchasing the dwelling-house ..."), as describing a "purchaser" in the conveyancing sense; or *Brock* v. *Wollams* [1949] 2 K.B. 388 (C.A.), in which Cohen, L.J., dealing with the question whether a certain person was a member of the deceased tenant's family, propounded the test: "Would an ordinary man, addressing his mind to the question, have answered 'yes' or 'no'?" That this line may not always lead to the results presumably intended by the Legislature was demonstrated by *Powell* v. *Cleland* [1948] K.B. 262 (C.A.), when the grantee of a concurrent lease was held, by parity of reasoning, not to be a landlord who had acquired by purchasing; but that is another matter.

The actual issue in *Edmunds* v. *Jones* depended, as we have seen, on whether the defendant could be said to have resided with her mother; but the judgment as reported covers, *obiter*, one or two other points which have been the subject of discussion. "The person claiming to succeed to *the* tenancy": the defendant was probably not greatly concerned with the question whether she acquired the same or a new tenancy; but a glance at the sixth subsection of the sixth section of the sixth chapter of Megarry (7th ed., p. 211) will show that there is much to be said for and against the proposition that the defendant "claimed to succeed to *the* tenancy."

Then, as the same author pointed out in former editions, as well as in the present one, it is not clear whether in order to qualify for a (or the) tenancy the "residing with" must have been in the house claimed for the required period. Suppose that *A* and *B*, being mother and daughter, reside together for many years, either in or not in controlled premises, but some four months before *A's* death move to a controlled dwelling-house let to *A*. Has *B* a claim under para. (*g*)? The report of the judgment in *Edmunds* v. *Jones* reads rather as if the court may have visualised residence for more than six months in the house claimed; but, I submit, not necessarily so, and at all events, if that interpretation were placed upon the words it could be considered a case of *obiter dicta*. If the question ever arises, recourse is likely to be had to the "real fundamental object" of the Acts: "protecting a

tenant from being turned out of his home" (*Curl* v. *Angelo* [1948] 2 All E.R. 189 (C.A.)) and in the suggested circumstances B would be able to contend, with some force, that she had always made her home with her mother and been a member of her mother's household.

A more recent case in which s. 12 (1) (*g*) has been under discussion is *Butler* v. *Hudson* [1953] 3 W.L.R. 227; *ante*, p. 472. In this, the meaning and effect of the concluding words, "such member of tenant's family so residing as aforesaid may be decided in default of agreement by the county court," were in issue. The judgments (of which Evershed, M.R.'s alone occupies some eight pages) were largely concerned with questions of practice and the effect of county court rules, and I will not deal with the points so discussed and decided in this article. As far as s. 12 (1) (*g*) is concerned, the facts were that the applicant was a lady who had lived in a house with her parents, both of whom had died, and it was not clear whether the original letting had been to her father (who died in 1936, after the tenancy had been made a statutory one) or to her mother, who died in 1950. She sought a "declaration" purportedly under s. 12 (1) (*g*) that she was entitled to succeed to her mother's tenancy. After proceedings before the registrar and the judge of the local county court, it was pointed out and decided by the Court of Appeal that an application under the paragraph was an application for the purpose of determining, where there has been failure to reach agreement, which member of the tenant's family residing with him is to be entitled to the benefit of the Act. It could not be invoked for the purpose of ascertaining whether someone was entitled to a tenancy at all.

A still more recent decision on the nature of such an application is *Taylor* v. *Willoughby* [1953] 1 W.L.R. 1020; *ante*, p. 523. The plaintiff, a stepdaughter, and the defendant, a son, of a deceased statutory tenant, both possessed the necessary residential qualification. On the tenant's death they went on living in the house, the landlord giving the plaintiff a rent book and receiving rent from her, and the defendant paying her £2 a week for board, etc. They then fell out, and the plaintiff demanded and sued for possession (*Keeves* v. *Dean* [1924] 1 K.B. 685 (C.A.) showed that a statutory tenant can do this). The county court judge considered that the ". . . as may be decided in default of agreement by the county court" was a mandatory provision, dismissed the action and "directed" that proceedings be taken under the rules; the Court of Appeal disagreed, holding that the failure to apply merely meant that neither party could assert a claim against the other, and that the action should have been adjourned so as to enable an application to be made. But the judgment of Evershed, M.R., concludes with the statement that if, after a reasonable interval, no application had been made, the plaintiff would be entitled to restore the action and base her claim on the fact that the landlord had recognised her as a *contractual* tenant. If that should happen, it would hardly be a case of reconversion into contractual tenancy, such as happened in *Mills* v. *Allen* [1953] 3 W.L.R. 356; *ante*, p. 505 (C.A.), for, *qua* the landlord, there should be a contractual tenancy by estoppel already. Consequently, the exact implications of a determination in favour of the son are a little difficult to foresee.

R. B.

PRACTICAL CONVEYANCING—LXII

CONTRACTS FOR SALE BY AUCTION

MOST readers will by now be familiar with the new Condition 21 of the Law Society's Conditions of Sale, 1953, which is designed to avoid local authority searches and inquiries before contract; its terms are discussed *ante*, pp. 395, 396 and 446. The use of it is optional and the writer has been asked whether a vendor's solicitor should incorporate the condition in a contract for sale by auction.

The point is interesting and of considerable importance in practice. On sale by private treaty, provided the purchaser takes the precaution of consulting his solicitor before signing a contract, the purchaser's solicitor has the opportunity of considering whether to agree to any proposal by the vendor's solicitor to incorporate the condition. Although the writer has expressed the view that in normal cases the purchaser's solicitor should agree, he appreciates that there may well be many cases where complications are likely, such that the purchaser's solicitor will advise that the searches and inquiries should be made before contract.

On a sale by auction, however, the contract is almost invariably prepared by the vendor's solicitor and signed by the purchaser before the purchaser's solicitor knows anything about the matter. In such a case it is apparent that the searches and inquiries cannot be made on behalf of the purchaser before the contract becomes binding. Consequently, there is every reason why in the purchaser's interest Condition 21 should be incorporated. As he cannot usually make the inquiries, justice requires that he should be given the right under Condition 21 to rescind if an adverse matter, which was not disclosed, is later discovered. On the other hand a vendor's solicitor, who must look primarily to the interests of his client, may consider that he should draw the contract in such a way as to make it as firm as possible; in other words, he should not give the purchaser the wide right of rescission under Condition 21.

It will be interesting to see how practice develops on this point. Looking at the matter impartially, one is bound to conclude that the fairest procedure is the use of Condition 21 in all contracts for sale by auction incorporating The Law Society's Conditions. If solicitors who know that their clients intend to bid sometimes ask whether this new procedure will be adopted by the contract they may thereby provide a good reason why vendors' solicitors should do so. Is it possible that on grounds such as these a practice might be developed that would be fair to purchasers who bid without consulting a solicitor and without any understanding of what is meant by the various special conditions that may be read out?

J. G. S.

HERE AND THERE

END OF TRINITY

THE sittings of the High Court are well and truly over. The last suitor in the last case on the last day of Trinity Term has met his doom, wondering at the narrow margin by which he has escaped spending the next two months under a sword of Damocles. The busy leaders, who spend their days in court and their nights studying interminable briefs, have vanished from the Temple and Lincoln's Inn and made themselves utterly inaccessible. Those idle juniors, who happen paradoxically to be also industrious apprentices at law, will do what idle juniors have been doing ever since we have any record of them. They will hang about the wide foreshore,

whence the tide of litigation has receded, in the hope of picking up on those desolate sands some unconsidered trifle or, maybe, some treasure or talisman that will alter the whole course of their careers. The Royal Courts of Justice stand deserted. No sound in the walls of the Hall where falls the tread of the feet of the solitary vacation judge. Amid their desert walks the occasional tourist lingers, aimlessly and pointlessly gaping at a hollow shell. This is the season when, if an attendant fails to detect your legal aura smothered beneath your unprofessional vacation garments, he may offer to show you those funny little wooden cells beneath the Court of Criminal Appeal. The term ended with unaccustomed bouquets in the Central Hall when, in the course of the last week, the Supreme Court Horticultural Association held its show there. Strangely and regrettably, none of the gardening or farming judges competed and their office only shone on this occasion in reflected glory and indirect illumination, the ladies of Pearce, J., and Ormerod, J., judging the cakes and jams and the clerk of Pilcher, J., winning prizes for antirrhinums and stocks. The occasion was decorative enough to attract the Press photographers, but with one of them human interest prevailed over the floral, and Fleet Street's outstanding pictorial impression was of a beautiful law student named Cecilia who would certainly have won a first prize had she been an exhibit. But, as one would have expected of an association of lawyers, there was a tendency to apply strict canons of construction to the rules for competitors. "Please read the schedule more carefully," admonished several notes of disqualification.

LEGAL FASHION PARADE

Now, if the ladies in the law would follow on with an exhibition of fashions, they could give a very useful lead. Every department of the law has its own atmosphere, with subtle differences in the correct approach. What you would wear at the Derby you would not wear at Ascot and, similarly, the petitioner for divorce or *a fortiori* the respondent will not (if she is wise) dress for the occasion as for a garden party. Very well, then, a legal fashion parade would illustrate the nuances between the day-by-day costume suitable for a lady in (*a*) conveyancing chambers, (*b*) criminal chambers, (*c*) general common law chambers, (*d*) a West End solicitor's office, (*e*) an East End solicitor's office. There would be delicate distinctions between the costume suitable for a lady student going to an interview with (*a*) the Treasurer of the Middle Temple, (*b*) the Under-Treasurer of Gray's Inn, (*c*) the Secretary of The Law Society and (*d*) the Inns of Court Welfare Officer. It is a matter of common sense that a lady giving evidence in one of the more newsworthy Queen's Bench cases might allow herself a touch of fantasy or even frivolity which would produce fatal results in the Divorce Court. Wear in the dock would form a most important section. In these days any lady may find herself there quite unexpectedly, but not all would feel able to follow the example of the theatrical beauty who recently appeared in a north country magistrates' court "hatless, wearing black jeans, an off-white cross-over coatee, large gold gipsy-style ear-rings and a heavy gold brooch." A legal fashion parade would be able to produce a few alternative suggestions to suit less colourful personalities. Once the importance of the idea was recognised, suitable costumes for female witnesses might be dealt with as a matter of course in the advice on evidence. It would also provide openings for women in both branches of the legal profession. Nor is the notion idle or frivolous. Preparation in detail and good stage management is of the essence of success. I knew a lady once whose rather too vivid personal appearance lost her her case in the Divorce Court. In the Court of Appeal her solicitor saw to it that the female figure most prominently displayed on his side was one of his lady clerks, a girl of most attractive and refined appearance. The appeal was allowed. The case went to the House of Lords, when the lay client could not resist attending very diligently throughout the hearing there. The Court of Appeal's decision was reversed. Then there's jury service. No woman with any dress sense would wear the same clothes to try a burglar at the Old Bailey and a fashionable libel action before Hilbery, J. Finally (women, even women lawyers, being what they are) there should certainly be a bridal section with suitable costumes for the occasion of marrying (*a*) a judge, (*b*) a distinguished Queen's counsel, (*c*) a junior barrister, solicitor or student. In the legal world the oddest things can happen.

RICHARD ROE.

REVIEWS

Rayden's Practice and Law in the Divorce Division. Sixth Edition. Consulting Editor: C. T. A. WILKINSON, Registrar of the Probate and Divorce Division. Editors: F. C. OTTWAY, of the Probate and Divorce Registry; JOSEPH JACKSON, M.A., LL.B. (Cantab.), LL.M. (Lond.), of the Middle Temple, Barrister-at-Law, and of the South-Eastern Circuit. 1953. London: Butterworth & Co. (Publishers), Ltd. £4 4s. net.

This is a first-class work and fully maintains the high standard of its previous editions. In reviewing a great work such as the new edition of Rayden, where every aspect of the law and practice of divorce is described in detail, it is not possible to discuss every chapter in turn. But there are a few points which call for particular comment.

The difficult problem of income tax, in relation to alimony, maintenance and the education of children, has been dealt with in the light of several far-reaching decisions, and is of the greatest assistance to practitioners.

In addition to reproducing the Legal Aid and Advice Act, 1949, and the Legal Aid (General) Regulations, 1950, Rayden notes the effect of the legal aid scheme in connection with every point of practice where it arises. This brings the matter to the notice of the inquirer far better than if the whole subject of legal aid was contained in a separate chapter devoted exclusively to that purpose.

The taxation of costs is dealt with in a manner which will be greatly appreciated by solicitors, and likewise the precedents of bills of costs should be of assistance to their branch of the profession. The chapter on summary jurisdiction and the references throughout the work to the powers of the justices will be of value to magistrates and to those advising on the question of appeals from magistrates' courts.

All the relevant statutes and rules are included in the appendices, and so are the various directions affecting practice and procedure in matrimonial causes. The index of 146 pages is both clear and comprehensive. Altogether a work which every divorce practitioner will want.

The Law of Agricultural Holdings. Second Edition. By W. S. SCAMMELL, M.C., LL.B. (London), Solicitor of the Supreme Court, a member of the Council of the Royal Institution of Chartered Surveyors. 1953. London: Butterworth & Co. (Publishers), Ltd. £2 5s. net.

It is the great merit of this work that the author never allows us to forget that the Agricultural Holdings Act, 1948, is part of a whole. The statute is in itself concerned with the law of landlord and tenant, and mainly with enlarging the rights of tenant farmers; but (and it may be recalled that for a short period of time its provisions were Pt. III of the Agriculture Act, 1947) is part of legislation the whole of which is designed to effect increased production of food.

For this reason, the summaries of Pts. I, II, IV and V of the 1947 Act, especially of Pt. II (Good Estate Management and Good Husbandry) are welcome and useful; and those using the book will find that, when discussing provisions of the 1948 statute itself, the author never hesitates to consider

the possible effect of or on enactments and rules which appear not to be immediately concerned with the subject-matter. For instance, the possibility of the Landlord and Tenant Act, 1927, applying to claims under the Agricultural Holdings Act, 1948, s. 57 (2), is discussed with great thoroughness; and the chapter on Arbitrations and Procedure for Settlement of Claims draws rightly on authorities which are not immediately concerned with farms or tenancies.

Occasionally one may feel that the author's conclusions on arguable points are a little indefinite, e.g., what is said about freedom of cropping of pasture on p. 173 cannot be wholly reconciled with the view expressed on p. 178; and the importance of *Kent* v. *Conniff* perhaps lies less in the fact that it gives more scope for courts of law than in the fact that it gives the landlord a remedy where it was generally thought that he had none. Also, the very valuable appendices, which teem with useful information and practical advice, may sometimes err in giving more of such than is likely to be sought by users of the book. But these are minor matters, and we can have no hesitation in welcoming the new edition as a well-arranged and well-reasoned statement of the law.

The Justices' Handbook. Third Edition. By J. P. EDDY, Q.C., Stipendiary Magistrate for East Ham and West Ham. 1953. London: Stevens & Sons, Ltd. 18s. net.

The last edition of this book appeared in 1951 and the new edition has been prepared because of the passing of the Magistrates' Courts Act, 1952. We notice that not all the criticisms which we made of the second edition have been met but we will not call attention to them again beyond saying that, in our view, the book ought to deal more fully with the duties of justices in relation to lunatics and mental defectives.

The book is intended to serve as a concise handbook to assist magistrates in the discharge of their duties. It is written in a clear and interesting style and we can recommend it to all magistrates as giving, in the main, an adequate and lucid account of their powers and duties. Articled clerks also will find that it gives a good general picture of law and procedure in magistrates' courts.

Paley on Summary Convictions and the Magistrates' Courts Act, 1952. Tenth Edition. By EDWARD HUGHES, Senior Chief Clerk, Bow Street Magistrates' Court, and A. C. L. MORRISON, C.B.E., Former Senior Chief Clerk, Bow Street Magistrates' Court. 1953. London: Sweet and Maxwell, Ltd. £3 15s. net.

Magistrates' Courts, Jurisdiction, Procedure and Appeals. By L. ROUSE JONES, B.C.L., of the Inner Temple, Barrister-at-Law. 1953. London: Sweet and Maxwell, Ltd. £2 10s. net.

These are both excellent books on summary jurisdiction. The new Paley differs from the previous edition, published in 1926, in that, instead of a series of chapters discussing the law, the Magistrates' Courts Act and Rules are set out in full, with commentary and cross-references. The prescribed forms are also included. There are short chapters on disqualification by bias and proceedings against justices and constables, and the Appendices cover a number of other matters arising in magistrates' courts.

Mr. Rouse Jones has produced an entirely new text-book and he rightly claims to have included authorities not to be found in any other modern text-book. He discusses the law in a series of chapters and does not set out the statutes and rules. His work is, in our view, quite the fullest and most learned book on the subjects covered and should take its place as the foremost text-book on the law of summary jurisdiction.

The new Paley is also a full and learned book, with perhaps more emphasis on the practical side of the work of a justices' clerk. We recommend both books unreservedly as giving accurate, lucid and complete statements of the whole of the law relating to magistrates' courts.

The only omission of any significance which we have been able to find in either book is a reference to the special practice in submitting "No case to answer" in summary matrimonial proceedings. We would also suggest to the editors of Paley that, though they accurately and adequately set out the law and practice, it is more helpful to users of the book to have modern rather than old authorities cited, e.g., *R.* v. *Caernarvon Licensing Justices; ex parte Benson* (1949), 113 J.P. 23, on bias, and *Halsted* v. *Clark* [1944] K.B. 250 on amending summonses and *autrefois acquit*.

Planning Applications, Appeals and Inquiries. By A. E. TELLING, M.A., of the Inner Temple, Barrister-at-Law, and F. H. B. LAYFIELD, A.M.T.P.I. 1953. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

There has for some time been a lull in the flow of books on town and country planning law, no doubt because of the impending changes in that law. The subject-matter of this book is, however, unlikely to be affected by these changes, so that no one need be deterred from buying it on that account.

The book is divided into three parts, Pt. I being headed Procedure for Planning Inquiries; Pt. II, Evidence in Planning Inquiries; and Pt. III, Miscellaneous Matters. It is a most useful and comprehensive guide, and Pt. II in particular will be of the greatest help to any solicitor who may be called upon to advise a client on the prospects of success in a planning appeal or to appear at a planning inquiry. This part contains, among other things, an exhaustive analysis, founded on many quotations from official publications and decisions on planning appeals, of those factors which influence the Minister in deciding to allow or dismiss an appeal, and will furnish the advocate with many an apposite quotation.

The book deals with development plans and their inquiries, as well as planning appeals properly so called, and Pt. I ranges much further afield than its heading would indicate, for it includes such matters as compulsory purchase procedure and highway and trunk road inquiries. In a few places this part contains statements which seem to the reviewer to be misleading. It says that (p. 7) an administrative officer of the Ministry holding an inquiry into an appeal under s. 17 of the Town and Country Planning Act, 1937, will have legal advisers with him, that (p. 30) the local planning authority are likely to be represented at a planning appeal inquiry by counsel, and that (p. 68) at a compulsory purchase order inquiry the objectors' cases are usually presented before that of the acquiring authority. The reverse of these statements would be more in accordance with practice.

However, these are but small criticisms of a book which strikes out on an independent and practical line and cannot fail to be of the greatest use and interest.

OBITUARY

MR. H. G. PARRY

Mr. Herbert Gwynne Parry, retired solicitor, of Bristol, has died at the age of 84. He retired from practice some twenty years ago.

MR. H. THOMSON

Mr. Harold Thomson, solicitor, of Slough, has died at the age of 78. A native of Kendal, Westmorland, he came to Slough in 1905 after being admitted in 1902.

MR. E. E. SMITH

Mr. Edwin Ernest Smith, solicitor, of Deansgate, Manchester, died on 29th July, aged 82. He was admitted in 1898.

MR. J. H. WHITTINGHAM

Mr. John Herbert Whittingham, solicitor, of Bolton, clerk to the Bolton Borough Magistrates since 1932, has died at the age of 58. He was admitted in 1920.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

SINGAPORE: LANDLORD AND TENANT: BUSINESS PREMISES: ALTERNATIVE ACCOMMODATION

Hardial Singh and Others *v.* Malayan Theatres, Ltd.

Lord Porter, Lord Tucker, Mr. T. Rinfret (C.J. of Canada) and Mr. L. M. D. de Silva

20th July, 1953

This was an appeal from a judgment of the High Court of Appeal of Singapore, dated 17th July, 1951, which reversed a judgment of the trial judge, dated 14th April, 1951. One branch of the appellants' business consisted in the importation of Indian films from India which they distributed to film exhibitors. The respondents, who were at one time lessees of the Theatre Royal, North Bridge Road, Singapore, continued in possession after the expiry of their lease as monthly tenants under the Control of Rent Ordinance, No. 25 of 1947, of Singapore, which applied to both dwelling-houses and business premises. The respondents owned some eight or nine theatres in Singapore. While the respondents were still in possession of the Theatre Royal the appellants, on 5th August, 1948, bought the Theatre Royal from the respondents' lessors. They made the purchase because they wanted a theatre in which they could themselves exhibit the films sent from India. Accordingly, they served notice to quit on the respondents on 29th November, 1948, purporting to terminate the contractual tenancy on 31st December, 1948, and a further notice to quit in respect of the protected tenancy terminating on 31st May, 1950. As the respondents refused to vacate the premises, the appellants brought the present action on 3rd October, 1950, claiming possession of the theatre, mesne profits or damages. To that action the respondents claimed the protection of the Control of Rent Ordinance, which by s. 14 provided: "(1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases: . . . (*m*) in any other case where the court considers it reasonable that such an order or judgment be made or given and is satisfied that suitable alternative accommodation is available for the tenant when the order or judgment takes effect." The trial judge, making an order for possession, held that, on the evidence, there was suitable alternative accommodation for the respondents in one of their other cinemas. The High Court of Appeal, reversing that decision, said that "alternative accommodation" in the Ordinance meant accommodation suitable for the carrying on of the business which had been displaced—that of the Theatre Royal—and that if the respondents were to be deprived of one set of premises, accommodation at another set could not be regarded as available within the meaning of the Ordinance if it was only available to them by displacing the business which they were then carrying on at that other set of premises.

LORD PORTER, giving the judgment, said that the Ordinance was dealing with a dwelling-house or a business at a particular place, and "alternative accommodation" in respect of a business meant accommodation suitable for the carrying on of the business which had been displaced. There must be shown to be alternative accommodation for the business carried on in the premises comprised in the tenancy, not simply accommodation for carrying on the business of the statutory tenant in some different and diminished way by some kind of rearrangement in the mode of its conduct. Where a multiple business was carried on at a number of different premises, it must be shown, before an order for possession of one set of premises could be made, that the business carried on in those premises could be adequately carried on elsewhere. While all the circumstances must be taken into account, unless the independent requirement of suitable alternative accommodation was complied with the court was not entitled to make an order for possession however much it was persuaded that it was reasonable to do so. In the present case the existence of suitable alternative accommodation had not been established. Appeal dismissed.

APPEARANCES: *Heathcote-Williams*, Q.C., and *Lionel Blundell* (*Kenneth Brown, Baker, Baker*); *Sir Hartley Shawcross*, Q.C., *Frank Gahan*, Q.C., and *F. R. N. H. Massey* (*Coward, Chance and Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 491**

CEYLON: INSURANCE (MOTOR): "NOTICE OF ACTION"

Ceylon Motor Insurance Association, Ltd. *v.* Thambugala

Lord Porter, Lord Tucker, Lord Asquith of Bishopstone, Mr. T. Rinfret (C.J. of Canada) and Mr. L. M. D. de Silva

21st July, 1953

This was an appeal from a decree of the Supreme Court of Ceylon dated 20th May, 1952, dismissing an appeal from a decree of the District Court of Colombo dated 24th October, 1950, in favour of the present respondent.

The proctors of the respondent, who had been injured by a motor car, the owner of which was insured against third-party risks by the appellant insurance company in accordance with the requirements of the Motor Car Ordinance, 1938, of Ceylon, wrote to the appellants on 21st May, 1946: "Re Car No. X—4851. We are instructed by [the respondent] . . . to file an action for the recovery of Rs.15,000 against [the owner of the car] . . . being damages sustained by our client on 1st September, 1945, by reason of the negligent and careless driving on the part of his driver . . . unless our client's claim is settled on or before the 31st instant, we are instructed to file action against the owner of the car." In an action against the owner of the car the respondent, on 25th June, 1948, obtained a decree for Rs.10,000, with legal interest and costs, which in all amounted to Rs.13,881 on 5th April, 1950, when he instituted proceedings pursuant to s. 133 of the Ordinance for the recovery of that sum from the appellants. The appellants sought to avoid liability on the ground that they had received no notice of action as required by s. 134 of the Ordinance, which provides that: "No sum shall be payable by an insurer under the provisions of s. 133—(*a*) in respect of any decree, unless before or within seven days after the commencement of the action in which the decree was entered, notice of the action had been given to the insurer by a party to the action; . . ."

Mr. L. M. D. DE SILVA, giving the judgment, said that the only question for decision was whether the letter of 21st May, 1946, was a sufficient notice of action under s. 134 of the Ordinance. Section 134 (*a*) bore a resemblance to s. 10 (2) of the English Road Traffic Act, 1934. English cases had been cited to their lordships which were distinguishable from the present case on a variety of grounds. It was only necessary to refer to *Lewis* v. *Smith* (1815), Holt N.P. 27 (C.P.), in which a letter on which the plaintiff in that case relied as giving notice bore in some respects a resemblance to the letter in the present case, but was thought by Gibbs, C.J., to leave "it open to conjecture what legal proceedings were in contemplation and against whom they were to be brought," and he held that the letter was not a proper notice of action under the Act there in question. The letter in the present case, however, said that the proceedings were to be for the recovery of damages and that they were to be brought against the owner of the car. It was consequently free from the defects referred to by Gibbs, C.J. The notice in this case set out the name and address of the proposed plaintiff, the name of the owner and the number of the car, the date of the accident and the sum which was being claimed. Their lordships were of the opinion that those elements taken together constituted a sufficient notice of action under s. 134, and that there were no elements in it which in any way reduced it to something less than a sufficient notice. The section did not require that the name of the court should be given. The words in the letter "unless our client's claim is settled" meant "settled by you"—the appellants; but even if they meant "settled by you or someone else" they did not vitiate the notice. Appeal dismissed.

APPEARANCES: *Geoffrey Cross*, Q.C., and *R. K. Handoo* (*Smiles & Co.*); *Stephen Chapman* (*Darley, Cumberland & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 486**

COURT OF APPEAL

HUSBAND AND WIFE: DIVORCE: VALIDITY OF NEW SOUTH WALES DECREE

Travers *v.* Holley

Somervell, Jenkins and Hodson, L.JJ. 14th July, 1953

Appeal from Mr. Commissioner Grazebrook, Q.C.

The New South Wales Matrimonial Causes Act, 1899, provides by s. 16 (*a*) that a wife domiciled in New South Wales for three

years may present a petition for divorce on the ground of three years' desertion, and should not be deemed to lose her domicile by reason only of her husband having thereafter acquired a foreign domicile. The Matrimonial Causes Act, 1937, provides by s. 13: "Where a wife has been deserted by her husband . . . and the husband was immediately before the desertion . . . domiciled in England and Wales, the court shall have jurisdiction . . . notwithstanding that the husband has changed his domicile since the desertion . . ." A husband and wife, shortly after their marriage in the United Kingdom in 1937, went to Sydney, New South Wales, taking with them all their belongings, the husband believing that the Commonwealth offered him better prospects. He invested money in a business in Sydney which, however, collapsed on the outbreak of war. For a time he worked on a sheep farm in northern New South Wales, leaving the wife in Sydney, where a child had been born in 1938. Later, he obtained a commission in the Australian forces, and subsequently transferred to the British forces. In August, 1943, the wife, alleging that she had been deserted since August, 1940, filed a petition for divorce in the Supreme Court of New South Wales, and was granted a decree which was made absolute on 13th November, 1944. The husband was served with notice of the petition, but did not defend it, and both husband and wife later remarried. In 1952 the husband, whose second marriage had not proved to be satisfactory, obtained a decree of divorce in the present action on the ground that the Australian decree was invalid because at the time it was granted neither husband nor wife was domiciled in New South Wales, and the wife, by remarrying, had been guilty of adultery. The wife appealed.

SOMERVELL, L.J., said that he was satisfied that the wife had discharged the burden of proving that the husband had at the relevant date acquired a domicile of choice in New South Wales. The effect of the two Acts was the same, though the wording was different, and on principle it was right that English courts should recognise a jurisdiction, which they themselves claimed, of granting a decree to a deserted wife whose husband had changed his domicile. The appeal should be allowed.

JENKINS, L.J., dissenting, said that in his view the evidence was not sufficient to establish that the husband acquired a New South Wales domicile, so that the New South Wales court was without jurisdiction. He agreed, however, that if the proper inferences had been otherwise, the resumption by the husband of his English domicile should not be held to deprive the New South Wales court of jurisdiction.

HODSON, L.J., said that the evidence that the husband formed a domicile of choice in New South Wales should be accepted. He later abandoned it, and contended that the domicile of both spouses at the time of the proceedings was the sole test of jurisdiction (see *Le Mesurier* v. *Le Mesurier* [1895] A.C. 517, where it was said that a divorce grounded on some local rule of law could not claim extra-territorial authority when it trenched on the interests of another country to whose courts the spouses were amenable). But since 1937 the local rule in the law of New South Wales was also the law of England. The English courts now arrogated to themselves jurisdiction over persons domiciled elsewhere, and they must recognise the similar right of the New South Wales court under similar legislation.

Appeal allowed.

APPEARANCES: *I. Lloyd*, Q.C., and *P. Hollins* (*Patersons, Snow & Co.*, for *Mee & Co.*, Retford); *H. J. Phillimore*, Q.C., and *D. Potter* (*L. A. E. Stiles*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 507**

CONTRACT: MUTUAL MISTAKE AS TO NATURE OF GOODS: RECTIFICATION NOT AVAILABLE

Frederick E. Rose (London), Ltd. *v.* William H. Pim, Jnr., & Co., Ltd.

Singleton, Denning and Morris, L.JJ. 16th July, 1953

Appeal from Pilcher, J.

The plaintiffs, London merchants, were asked by their Egyptian house for "Moroccan horsebeans described here as feveroles." Their representative did not know what feveroles were, and asked the defendants' representative, who, after making inquiries, told him that feveroles were just horsebeans and that his firm could procure them. After negotiations on that basis, written contracts were concluded (1) between North African suppliers and the defendants, (2) between the defendants and the plaintiffs, and (3) between the plaintiffs and Egyptian buyers, for the sale and purchase of "horsebeans," payment to be in London by confirmed irrevocable letters of credit against shipping documents. When the horsebeans, shipped from Tunis, were received by the Egyptian buyers, the latter found that the commodity supplied was not feveroles, but another type of bean; but as they had paid for the goods, they accepted them and claimed damages. The resulting disputes between the plaintiffs and the defendants were referred to arbitration, and awards made in favour of the defendants. The plaintiffs then started proceedings in the High Court, claiming, *inter alia*, rectification of the contracts by the addition of the word "feveroles" after the word "horsebeans," intending, if successful, to claim damages on the contracts as rectified. Pilcher, J., found that both parties had made an oral agreement by which they intended to deal in "horsebeans of the feverole type," but that owing to a mutual mistake innocently induced by the sellers' representative, all the written contracts were for horsebeans; and he allowed the rectification asked for by the plaintiffs. The defendants appealed.

SINGLETON, L.J., said that the question whether the plaintiffs were entitled to rectification depended not on intention but on proof that the written contract was not the contract into which the parties entered, and the terms of the contract into which they had entered must be clearly proved. He accepted the finding that both parties were under a mistaken view as to what "feveroles" were and that that mistake came about as a result of what the defendants' representative had said. But the offer accepted by the plaintiffs clearly was horsebeans. The oral contract was for horsebeans and the written contract was in the same terms. In those circumstances a claim to rectify the written contract by adding the word "feveroles" could not succeed. Whatever remedies the plaintiffs might have, or might have had, rectification was not one of them.

DENNING, L.J., agreed. He said that neither the Egyptian buyer nor the plaintiffs could claim damages under the written contracts because they were for horsebeans and the goods delivered were in fact horsebeans. The parties had been under a common mistake which was of a fundamental character with regard to the subject-matter. But they were to all outward appearances in full and certain agreement, and therefore neither of them could set up his own mistake or the mistake of both of them so as to make the contract a nullity from the beginning, though they might have rejected the goods when they discovered the mistake and asked for their money back. Pilcher, J., had allowed rectification because he had held that it was the "continuing common intention" of the parties to deal in horsebeans of the feveroles type. In that his lordship thought the judge was wrong. Rectification was concerned with contracts and documents and not with intentions. To get rectification it was necessary to show that the parties were in complete agreement on the terms of their contract but by an error wrote them down wrongly; and to ascertain the terms, one did not look into the inner minds of the parties, but at their outward acts. Here the agreement of the parties, as outwardly expressed, both orally and in writing, was for "horsebeans." That was all that the defendants had ever committed themselves to supply, and all they should be bound to.

MORRIS, L.J., agreed. He said that the joint understanding was that the parties should contract in reference to "horsebeans" *simpliciter*, which they thought were the same as "feveroles." If they were wrong, it appeared probable that they would not have acted as they did had they been enlightened. But that did not enable one party to convert the contract into something different from what it was. Appeal allowed.

APPEARANCES: *T. G. Roche* (*Richards, Butler & Co.*); *W. J. K. Diplock*, Q.C., *Eustace Roskill*, Q.C., *A. J. Bateson* and *J. H. A. Scarlett* (*Thomas Cooper & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 497**

CHANCERY DIVISION

COSTS: TAXATION: COUNSEL'S FEES

***In re* Holberton's Settlement Trusts; Thorburn *v.* Hart and Others**

Danckwerts, J. 11th June, 1953

Summons to review taxation.

A trustee of a settlement, on returning from service in the forces, learned that his co-trustee, *H*, a solicitor, had committed technical breaches of trust, and he, on 22nd January, 1948, took out an originating summons which asked (*a*) for the execution of the trusts of the settlement by the court; (*b*) for directions. On 24th December, 1949, *H* died, and on 1st March, 1950, an order was made to proceed. On 4th July, 1950, the

plaintiff took out a summons for the determination of certain questions in regard to the accounts, and which asked, *inter alia*, whether to institute proceedings against the settlor. On 15th November, 1950, an order was made adding the personal representatives of *H* as defendants and the summons was adjourned into court. In the meantime negotiations were on foot for a settlement by way of compromise between the parties. By 4th December, 1950, its main terms had been settled. The plaintiff, however, was advised that it was necessary to obtain the approval of the court, and that a scheme could not be formulated until the court had ascertained the extent to which, if any, the trust fund was deficient. On 5th December, 1950, an attempt was made to set down the summons of 4th July, 1950, but this was abortive as *H's* personal representatives had not entered an appearance. On 6th December, 1950, the plaintiff's solicitors delivered briefs to leading and junior counsel. *H's* personal representatives having entered an appearance, the summons was set down on 24th January, 1951. On 5th February, 1952, the settlor took out a summons for an order disposing of the action on agreed terms, and on 28th April, 1952, the judge in chambers made an order by consent on both summonses, the matter being finally disposed of. By the order the costs of all parties were directed to be taxed as between solicitor and client and paid out of the capital of the trust fund. On taxation the taxing master disallowed briefs and brief fees to leading and junior counsel on the grounds, *inter alia*, (i) that the briefs were prematurely delivered, and (ii) that negotiations for a compromise were in progress before they were delivered, and that terms of settlement were agreed shortly afterwards. On objections being lodged, he allowed a small fee to junior counsel, but dismissed the objections in regard to leading counsel's fees and the greater part of junior counsel's fees.

DANCKWERTS, J., said that the terms of compromise originally agreed could not be adopted until they had been approved by the court; such approval was by no means certain, so that it was not unreasonable to have delivered briefs after agreement as to terms. The taxing master had further taken no account of the fact that the terms ultimately agreed differed from the first terms and that the negotiations between December, 1950, and April, 1952, had been conducted by leading counsel without other remuneration than that on the brief originally delivered. The fees of leading and junior counsel would be allowed. Order accordingly.

APPEARANCES: *H. A. H. Christie*, Q.C., and *J. A. Brightman* (*Barnett, Tuson & Co.*); *W. S. Wigglesworth* (*Gamlen, Bowerman and Forward*).

[Reported by F. R DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1080**

EASEMENT: RIGHT OF WAY TO "PASS AND REPASS WITH OR WITHOUT VEHICLES FOR THE PURPOSE OF OBTAINING ACCESS TO AUCTION MART"

Bulstrode *v.* Lambert

Upjohn, J. 15th July, 1953

Action.

By a conveyance made in 1944, the plaintiff's father and predecessor in title conveyed to the defendant's predecessor in title a house "reserving unto the vendor his tenants and workmen and others authorised by him the right to pass and repass with or without vehicles over and along the land coloured brown on the . . . plan for the purpose of obtaining access to the building at the rear of the said premises and known as the auction mart." This auction mart, at which the plaintiff and his father before him had for a long time held periodical sales of furniture and chattels, lay behind the defendant's house and the plaintiff's house, which was next door. Access to it was had by a wide drive at the side of the plaintiff's house, leading to wide sliding doors in the mart building, and also by a narrower passageway ("coloured brown on the plan") at the side of the defendant's house, leading to a door 3 feet 6 inches wide. At the date of the conveyance the defendant's entrance was obstructed by wooden gates and other erections which prevented the entry of large vans, but these became dilapidated, and were removed by the defendant in about 1951. Thereafter the plaintiff, when pressure of traffic to or from the mart caused congestion at the main entrance, made use of the defendant's entrance for the entry of vehicles, including pantechnicons, bringing articles to and from sales, and such vehicles halted for appreciable periods on the right of way to load and unload. The defendant, who carried on business as a café, guest house and car hire proprietor, objected to this use of his side entrance, as it was an obstruction to his guests and servants and prevented him from taking out his car when required. The plaintiff brought an action to determine his rights in the dispute.

UPJOHN, J., said that, on the authorities, where a right of way was reserved in an express grant, it was important to consider the *locus in quo*, the *terminus ad quem*, and the purpose for which the grant was to be used, for purposes of construction, and also the material facts existing at the date of the grant (see Gale on Easements, 12th ed., at p. 315, and *Lord Waterpark* v. *Fennell* (1859), 7 H.L.Cas. 650, at p. 684). The material provision in the grant was a reservation, and was accordingly not to be construed against the grantor. The defendant had argued for a narrow construction, limited, in particular, by the obstructions in existence in 1944. But the language was plain and unambiguous without limitations; the plaintiff had the right to go over the part coloured brown, and the whole object was to give him an alternative way to bring chattels to and from sales at the mart. This view was supported by the observations of Jessel, M.R., in *Cannon* v. *Villars* (1878), 8 Ch. D. 415, at p. 421. Accordingly, the plaintiff had the right to bring pantechnicons and vehicles on to the right of way for the carriage of chattels to and from the mart. A more difficult question, on which there seemed to be no authority, was whether such vehicles could halt in the right of way. Taking into account the purpose for which the right was reserved, and the observations of Lord Parker in *Pwllbach Colliery Co., Ltd.* v. *Woodman* [1915] A.C. 634, at p. 646, the true view was that the right of coming on to the land in order to reach the mart was useless to the plaintiff unless the vehicle taking goods to and from the mart could halt for such time as was necessary to load and unload; so that that right was included also in the reservation in the conveyance. The plaintiff was entitled to succeed, but it was his duty to incommode the defendant as little as possible; otherwise the defendant would have a just cause of complaint.

Judgment for the plaintiff.

APPEARANCES: *H. E. Francis* (*Gillhams*, for *G. T. Richards and Morgan*, Bournemouth); *I. Campbell* (*Lovell, Son and Pitfield*, for *R. E. Druitt & Allfree*, Christchurch).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1064**

FRIENDLY SOCIETY: POWER TO APPOINT CORPORATE BODY AS SOLE TRUSTEE

***In re* Pilkington Brothers, Ltd., Workmen's Pension Fund**

Danckwerts, J. 23rd July, 1953

Originating motion.

The applicants were registered under the Friendly Societies Act, 1896, and operated the pension fund of a well-known firm of glass manufacturers. The rules provided that there should be four trustees. It was considered that the appointment of a sole corporate trustee, whose directors would be the committee of management of the society, would save trouble and expense and promote efficiency of administration. Accordingly, an amendment to the rules was put forward and duly passed by the members, whereby an incorporated company might be appointed, in place of all existing trustees, by a resolution of the members in general meeting. The Registrar of Friendly Societies refused to register the amendment, as he considered that there was no power under the Act to appoint a sole corporate trustee. The society appealed.

DANCKWERTS, J., said that by s. 25 (1) of the Act there must be "one or more trustees"; there was no express prohibition of the appointment of a corporation to be a trustee or sole trustee. As by s. 19 of the Interpretation Act, 1889, "person" (a word used with reference to a trustee in the Act of 1896) included a body corporate, unless the contrary intention appeared, the burden was on the registrar to show a contrary intention. In the *West of England and South Wales District Bank* case (1879), 11 Ch. D. 768, Fry, J., had held that an incorporated company could not be the treasurer of a friendly society within the meaning of the Friendly Societies Act, 1875, which did not differ materially in the material sections from the Act of 1896. Such a decision carried great weight, but its relevance was that the definition sections of the two Acts, unless a contrary intention appeared, treated a trustee and a treasurer equally as "officers" of a society. But there were indications in s. 35 of the Act of 1896 that there was a contrast between "trustee" and "officer," and the *West of England Bank* case (*supra*), was not a compelling authority. The other chief difficulty was that s. 25 (3) required that the appointment of a trustee should be "signed" by the trustee so appointed, and the question was whether a company could

years may present a petition for divorce on the ground of three years' desertion, and should not be deemed to lose her domicile by reason only of her husband having thereafter acquired a foreign domicile. The Matrimonial Causes Act, 1937, provides by s. 13: "Where a wife has been deserted by her husband . . . and the husband was immediately before the desertion . . . domiciled in England and Wales, the court shall have jurisdiction . . . notwithstanding that the husband has changed his domicile since the desertion . . ." A husband and wife, shortly after their marriage in the United Kingdom in 1937, went to Sydney, New South Wales, taking with them all their belongings, the husband believing that the Commonwealth offered him better prospects. He invested money in a business in Sydney which, however, collapsed on the outbreak of war. For a time he worked on a sheep farm in northern New South Wales, leaving the wife in Sydney, where a child had been born in 1938. Later, he obtained a commission in the Australian forces, and subsequently transferred to the British forces. In August, 1943, the wife, alleging that she had been deserted since August, 1940, filed a petition for divorce in the Supreme Court of New South Wales, and was granted a decree which was made absolute on 13th November, 1944. The husband was served with notice of the petition, but did not defend it, and both husband and wife later remarried. In 1952 the husband, whose second marriage had not proved to be satisfactory, obtained a decree of divorce in the present action on the ground that the Australian decree was invalid because at the time it was granted neither husband nor wife was domiciled in New South Wales, and the wife, by remarrying, had been guilty of adultery. The wife appealed.

SOMERVELL, L.J., said that he was satisfied that the wife had discharged the burden of proving that the husband had at the relevant date acquired a domicile of choice in New South Wales. The effect of the two Acts was the same, though the wording was different, and on principle it was right that English courts should recognise a jurisdiction, which they themselves claimed, of granting a decree to a deserted wife whose husband had changed his domicile. The appeal should be allowed.

JENKINS, L.J., dissenting, said that in his view the evidence was not sufficient to establish that the husband acquired a New South Wales domicile, so that the New South Wales court was without jurisdiction. He agreed, however, that if the proper inferences had been otherwise, the resumption by the husband of his English domicile should not be held to deprive the New South Wales court of jurisdiction.

HODSON, L.J., said that the evidence that the husband formed a domicile of choice in New South Wales should be accepted. He later abandoned it, and contended that the domicile of both spouses at the time of the proceedings was the sole test of jurisdiction (see *Le Mesurier* v. *Le Mesurier* [1895] A.C. 517, where it was said that a divorce grounded on some local rule of law could not claim extra-territorial authority when it trenched on the interests of another country to whose courts the spouses were amenable). But since 1937 the local rule in the law of New South Wales was also the law of England. The English courts now arrogated to themselves jurisdiction over persons domiciled elsewhere, and they must recognise the similar right of the New South Wales court under similar legislation.

Appeal allowed.

APPEARANCES: *I. Lloyd*, Q.C., and *P. Hollins* (*Patersons, Snow & Co.*, for *Mee & Co.*, Retford); *H. J. Phillimore*, Q.C., and *D. Potter* (*L. A. E. Stiles*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 507

CONTRACT: MUTUAL MISTAKE AS TO NATURE OF GOODS: RECTIFICATION NOT AVAILABLE

Frederick E. Rose (London), Ltd. *v.* William H. Pim, Jnr., & Co., Ltd.

Singleton, Denning and Morris, L.JJ. 16th July, 1953

Appeal from Pilcher, J.

The plaintiffs, London merchants, were asked by their Egyptian house for "Moroccan horsebeans described here as feveroles." Their representative did not know what feveroles were, and asked the defendants' representative, who, after making inquiries, told him that feveroles were just horsebeans and that his firm could procure them. After negotiations on that basis, written contracts were concluded (1) between North African suppliers and the defendants, (2) between the defendants and the plaintiffs, and (3) between the plaintiffs and Egyptian buyers, for the sale and purchase of "horsebeans," payment to be in London by confirmed irrevocable letters of credit against shipping documents. When the horsebeans, shipped from Tunis, were received by the Egyptian buyers, the latter found that the commodity supplied was not feveroles, but another type of bean; but as they had paid for the goods, they accepted them and claimed damages. The resulting disputes between the plaintiffs and the defendants were referred to arbitration, and awards made in favour of the defendants. The plaintiffs then started proceedings in the High Court, claiming, *inter alia*, rectification of the contracts by the addition of the word "feveroles" after the word "horsebeans," intending, if successful, to claim damages on the contracts as rectified. Pilcher, J., found that both parties had made an oral agreement by which they intended to deal in "horsebeans of the feverole type," but that owing to a mutual mistake innocently induced by the sellers' representative, all the written contracts were for horsebeans; and he allowed the rectification asked for by the plaintiffs. The defendants appealed.

SINGLETON, L.J., said that the question whether the plaintiffs were entitled to rectification depended not on intention but on proof that the written contract was not the contract into which the parties entered, and the terms of the contract into which they had entered must be clearly proved. He accepted the finding that both parties were under a mistaken view as to what "feveroles" were and that that mistake came about as a result of what the defendants' representative had said. But the offer accepted by the plaintiffs clearly was horsebeans. The oral contract was for horsebeans and the written contract was in the same terms. In those circumstances a claim to rectify the written contract by adding the word "feveroles" could not succeed. Whatever remedies the plaintiffs might have, or might have had, rectification was not one of them.

DENNING, L.J., agreed. He said that neither the Egyptian buyer nor the plaintiffs could claim damages under the written contracts because they were for horsebeans and the goods delivered were in fact horsebeans. The parties had been under a common mistake which was of a fundamental character with regard to the subject-matter. But they were to all outward appearances in full and certain agreement, and therefore neither of them could set up his own mistake or the mistake of both of them so as to make the contract a nullity from the beginning, though they might have rejected the goods when they discovered the mistake and asked for their money back. Pilcher, J., had allowed rectification because he had held that it was the "continuing common intention" of the parties to deal in horsebeans of the feveroles type. In that his lordship thought the judge was wrong. Rectification was concerned with contracts and documents and not with intentions. To get rectification it was necessary to show that the parties were in complete agreement on the terms of their contract but by an error wrote them down wrongly; and to ascertain the terms, one did not look into the inner minds of the parties, but at their outward acts. Here the agreement of the parties, as outwardly expressed, both orally and in writing, was for "horsebeans." That was all that the defendants had ever committed themselves to supply, and all they should be bound to.

MORRIS, L.J., agreed. He said that the joint understanding was that the parties should contract in reference to "horsebeans" *simpliciter*, which they thought were the same as "feveroles." If they were wrong, it appeared probable that they would not have acted as they did had they been enlightened. But that did not enable one party to convert the contract into something different from what it was. Appeal allowed.

APPEARANCES: *T. G. Roche* (*Richards, Butler & Co.*); *W. J. K. Diplock*, Q.C., *Eustace Roskill*, Q.C., *A. J. Bateson* and *J. H. A. Scarlett* (*Thomas Cooper & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [3 W.L.R. 497

CHANCERY DIVISION

COSTS: TAXATION: COUNSEL'S FEES

***In re* Holberton's Settlement Trusts; Thorburn *v.* Hart and Others**

Danckwerts, J. 11th June, 1953

Summons to review taxation.

A trustee of a settlement, on returning from service in the forces, learned that his co-trustee, *H*, a solicitor, had committed technical breaches of trust, and he, on 22nd January, 1948, took out an originating summons which asked (*a*) for the execution of the trusts of the settlement by the court; (*b*) for directions. On 24th December, 1949, *H* died, and on 1st March, 1950, an order was made to proceed. On 4th July, 1950, the

plaintiff took out a summons for the determination of certain questions in regard to the accounts, and which asked, *inter alia*, whether to institute proceedings against the settlor. On 15th November, 1950, an order was made adding the personal representatives of *H* as defendants and the summons was adjourned into court. In the meantime negotiations were on foot for a settlement by way of compromise between the parties. By 4th December, 1950, its main terms had been settled. The plaintiff, however, was advised that it was necessary to obtain the approval of the court, and that a scheme could not be formulated until the court had ascertained the extent to which, if any, the trust fund was deficient. On 5th December, 1950, an attempt was made to set down the summons of 4th July, 1950, but this was abortive as *H's* personal representatives had not entered an appearance. On 6th December, 1950, the plaintiff's solicitors delivered briefs to leading and junior counsel. *H's* personal representatives having entered an appearance, the summons was set down on 24th January, 1951. On 5th February, 1952, the settlor took out a summons for an order disposing of the action on agreed terms, and on 28th April, 1952, the judge in chambers made an order by consent on both summonses, the matter being finally disposed of. By the order the costs of all parties were directed to be taxed as between solicitor and client and paid out of the capital of the trust fund. On taxation the taxing master disallowed briefs and brief fees to leading and junior counsel on the grounds, *inter alia*, (i) that the briefs were prematurely delivered, and (ii) that negotiations for a compromise were in progress before they were delivered, and that terms of settlement were agreed shortly afterwards. On objections being lodged, he allowed a small fee to junior counsel, but dismissed the objections in regard to leading counsel's fees and the greater part of junior counsel's fees.

DANCKWERTS, J., said that the terms of compromise originally agreed could not be adopted until they had been approved by the court; such approval was by no means certain, so that it was not unreasonable to have delivered briefs after agreement as to terms. The taxing master had further taken no account of the fact that the terms ultimately agreed differed from the first terms and that the negotiations between December, 1950, and April, 1952, had been conducted by leading counsel without other remuneration than that on the brief originally delivered. The fees of leading and junior counsel would be allowed. Order accordingly.

APPEARANCES: *H. A. H. Christie*, Q.C., and *J. A. Brightman* (*Barnett, Tuson & Co.*); *W. S. Wigglesworth* (*Gamlen, Bowerman and Forward*).

[Reported by F. R DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1080**

EASEMENT: RIGHT OF WAY TO "PASS AND REPASS WITH OR WITHOUT VEHICLES FOR THE PURPOSE OF OBTAINING ACCESS TO AUCTION MART"

Bulstrode *v.* Lambert

Upjohn, J. 15th July, 1953

Action.

By a conveyance made in 1944, the plaintiff's father and predecessor in title conveyed to the defendant's predecessor in title a house "reserving unto the vendor his tenants and workmen and others authorised by him the right to pass and repass with or without vehicles over and along the land coloured brown on the . . . plan for the purpose of obtaining access to the building at the rear of the said premises and known as the auction mart." This auction mart, at which the plaintiff and his father before him had for a long time held periodical sales of furniture and chattels, lay behind the defendant's house and the plaintiff's house, which was next door. Access to it was had by a wide drive at the side of the plaintiff's house, leading to wide sliding doors in the mart building, and also by a narrower passageway ("coloured brown on the plan") at the side of the defendant's house, leading to a door 3 feet 6 inches wide. At the date of the conveyance the defendant's entrance was obstructed by wooden gates and other erections which prevented the entry of large vans, but these became dilapidated, and were removed by the defendant in about 1951. Thereafter the plaintiff, when pressure of traffic to or from the mart caused congestion at the main entrance, made use of the defendant's entrance for the entry of vehicles, including pantechnicons, bringing articles to and from sales, and such vehicles halted for appreciable periods on the right of way to load and unload. The defendant, who carried on business as a café, guest house and car hire proprietor, objected to this use of his side entrance, as it was an obstruction to his guests and servants and prevented him from taking out his car when required. The plaintiff brought an action to determine his rights in the dispute.

UPJOHN, J., said that, on the authorities, where a right of way was reserved in an express grant, it was important to consider the *locus in quo*, the *terminus ad quem*, and the purpose for which the grant was to be used, for purposes of construction, and also the material facts existing at the date of the grant (see Gale on Easements, 12th ed., at p. 315, and *Lord Waterpark* v. *Fennell* (1859), 7 H.L.Cas. 650, at p. 684). The material provision in the grant was a reservation, and was accordingly not to be construed against the grantor. The defendant had argued for a narrow construction, limited, in particular, by the obstructions in existence in 1944. But the language was plain and unambiguous without limitations; the plaintiff had the right to go over the part coloured brown, and the whole object was to give him an alternative way to bring chattels to and from sales at the mart. This view was supported by the observations of Jessel, M.R., in *Cannon* v. *Villars* (1878), 8 Ch. D. 415, at p. 421. Accordingly, the plaintiff had the right to bring pantechnicons and vehicles on to the right of way for the carriage of chattels to and from the mart. A more difficult question, on which there seemed to be no authority, was whether such vehicles could halt in the right of way. Taking into account the purpose for which the right was reserved, and the observations of Lord Parker in *Pwllbach Colliery Co., Ltd.* v. *Woodman* [1915] A.C. 634, at p. 646, the true view was that the right of coming on to the land in order to reach the mart was useless to the plaintiff unless the vehicle taking goods to and from the mart could halt for such time as was necessary to load and unload; so that that right was included also in the reservation in the conveyance. The plaintiff was entitled to succeed, but it was his duty to incommode the defendant as little as possible; otherwise the defendant would have a just cause of complaint.

Judgment for the plaintiff.

APPEARANCES: *H. E. Francis* (*Gillhams*, for *G. T. Richards and Morgan*, Bournemouth); *I. Campbell* (*Lovell, Son and Pitfield*, for *R. E. Druitt & Allfree*, Christchurch).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1064**

FRIENDLY SOCIETY: POWER TO APPOINT CORPORATE BODY AS SOLE TRUSTEE

***In re* Pilkington Brothers, Ltd., Workmen's Pension Fund**

Danckwerts, J. 23rd July, 1953

Originating motion.

The applicants were registered under the Friendly Societies Act, 1896, and operated the pension fund of a well-known firm of glass manufacturers. The rules provided that there should be four trustees. It was considered that the appointment of a sole corporate trustee, whose directors would be the committee of management of the society, would save trouble and expense and promote efficiency of administration. Accordingly, an amendment to the rules was put forward and duly passed by the members, whereby an incorporated company might be appointed, in place of all existing trustees, by a resolution of the members in general meeting. The Registrar of Friendly Societies refused to register the amendment, as he considered that there was no power under the Act to appoint a sole corporate trustee. The society appealed.

DANCKWERTS, J., said that by s. 25 (1) of the Act there must be "one or more trustees"; there was no express prohibition of the appointment of a corporation to be a trustee or sole trustee. As by s. 19 of the Interpretation Act, 1889, "person" (a word used with reference to a trustee in the Act of 1896) included a body corporate, unless the contrary intention appeared, the burden was on the registrar to show a contrary intention. In the *West of England and South Wales District Bank* case (1879), 11 Ch. D. 768, Fry, J., had held that an incorporated company could not be the treasurer of a friendly society within the meaning of the Friendly Societies Act, 1875, which did not differ materially in the material sections from the Act of 1896. Such a decision carried great weight, but its relevance was that the definition sections of the two Acts, unless a contrary intention appeared, treated a trustee and a treasurer equally as "officers" of a society. But there were indications in s. 35 of the Act of 1896 that there was a contrast between "trustee" and "officer," and the *West of England Bank* case (*supra*), was not a compelling authority. The other chief difficulty was that s. 25 (3) required that the appointment of a trustee should be "signed" by the trustee so appointed, and the question was whether a company could

"sign." But in *In re British Games, Ltd.* [1938] Ch. 240, where the point turned on the requirement of s. 6 (1) of the Moneylenders Act, 1927, that the contract should be signed personally by the borrower, Simonds, J., held that there was sufficient compliance if the contract was signed by a person acting under the authority of the company; the same principle applied in the present case, so that it was possible for a company to comply with s. 25 (3). On consideration of all the provisions of the Act of 1896, there seemed to be nothing inconsistent with the appointment of a corporate body as sole trustee, so that there would be an order to the registrar directing him to register the amendment.

Order accordingly.

APPEARANCES: *J. Pennycuick*, Q.C., and *Eric Griffith* (*R. H. Eggar*, St. Helens); *N. S. Warren* (*D. Buckley* with him) (*Treasury Solicitor*).

Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 1084

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 31st July:—

Appropriation

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and fifty-four and to appropriate the supplies granted in this Session of Parliament.

Berkshire County Council
British Transport Commission
Cheshire County Council
Coventry Cathedral
Dudley Extension
Emergency Laws (Miscellaneous Provisions)
Finance
Foundling Hospital
Historic Buildings and Ancient Monuments
Hospital Endowments (Scotland)
Isle of Man (Customs)
Licensing
London County Council (General Powers)
Marshall Aid Commemoration
Merchandise Marks
National Insurance (Industrial Injuries)
New Towns
Oxford Corporation
Post Office
Registration Service
School Crossing Patrols
Tees Valley Water
University of St. Andrews
Valuation for Rating
West Bridgford Urban District Council

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Protection of Animals (Amendment) Bill [H.L.] [28th July.

To repeal the Animals (Anaesthetics) Act, 1919, and to extend the provisions of the Protection of Animals Acts, 1911 to 1933, in relation to the performance of operations on animals.

Read Second Time:—

Monopolies and Restrictive Practices Commission Bill [H.C.] [27th July.

B. QUESTIONS

PART-TIME CLERKS TO JUSTICES

The LORD CHANCELLOR stated that the Government had now decided, in principle, that part-time clerks to justices who lost office in consequence of reorganisation schemes under the Justices of the Peace Act, 1949, might receive a measure of compensation. The part-time clerks of the peace who lost office when their boroughs lost their commissions of the peace would be similarly treated. The details of the scheme were now being worked out. Regulations would be made under s. 42 of the Act as soon as possible. [30th July.

HOUSE OF COMMONS

QUESTIONS

TAX ARREARS (DISTRAINT)

Lieut.-Col. LIPTON asked whether the Chancellor of the Exchequer would remove from tax officers a right which they alone in the whole community possessed, namely, the power to issue a warrant on their own initiative to distrain the goods of any citizen. Was it not time that tax collectors were put in the same position as any other creditors? Mr. R. A. BUTLER said he did not agree, and reminded the member that in the great majority of distraint court cases the authorities did not have to press to actual levy. [28th July.

HOUSES (SELLING PRICES)

Mr. ERNEST MARPLES said that it was hoped to make an announcement shortly after the Recess as to the Government's intentions with regard to the prices of houses controlled by s. 43 of the Housing Act, 1949, which expired later this year. [28th July.

DETENTION ORDERS (LEGAL REPRESENTATION)

The MINISTER OF HEALTH said he did not think that legislation was needed to enable next of kin to be legally represented in appeals to the Board of Control against the making or renewal of detention orders under the Mental Deficiency Acts. The Board were always prepared to give interviews to the legal representatives of the next of kin of patients, as they had always been to the next of kin themselves, and to give full consideration to any representations made. [30th July.

LEGAL AID CASES (INCREASED FEES)

The HOME SECRETARY made the following statement with regard to the increase of remuneration to solicitors and counsel who undertake defence of persons granted legal aid in criminal cases:—

"The General Council of the Bar and The Law Society have represented to me that the present fees are inadequate and have asked that the provisions of ss. 21 to 23 of the Legal Aid and Advice Act, 1949, should be brought into force. The Government would not at present feel justified in bringing these provisions into force, but recognise that a case has been made out for an increase in the existing fees. I have decided, as a temporary measure, to increase the existing fees under the existing Acts by 50 per cent., and also to provide, where a trial lasts for more than two full days at quarter sessions or assizes, for the payment of a daily fee after the second day of seven guineas to leading counsel, five guineas to junior counsel and four guineas to solicitors. The associations of local authorities have agreed on behalf of the local authorities, on whom the cost of legal aid now falls, to these proposals, and the necessary amending regulations will be made as soon as possible." [30th July.

STATUTORY INSTRUMENTS

Agricultural Produce (Preservation) (Revocation) Order, 1953. (S.I. 1953 No. 1133.)
Cereal Crops (Revocation) Order, 1953. (S.I. 1953 No. 1134.)
Connel-Glencoe Trunk Road (Dallens and Other Diversions) (Variation) Order, 1953. (S.I. 1953 No. 1128.)
Control of Paper (Newspapers) (Economy) (Amendment No. 1) Order, 1953. (S.I. 1953 No. 1140.) 5d.
Corn (Sale of Standing Crops and Unthreshed Corn) (Revocation) Order, 1953. (S.I. 1953 No. 1135.)
Diseases of Animals (Therapeutic Substances) Amendment Order, 1953. (S.I. 1953 No. 1122.)
Education Authority Bursaries (Scotland) Regulations, 1953. (S.I. 1953 No. 1123 (S.97).) 8d.
Feeding Stuffs (Revocation) Order, 1953. (S.I. 1953 No. 1125.)
Home Grown Grains (Revocation) Order, 1953. (S.I. 1953 No. 1126.)
Import Duties (Drawback) (No. 8) Order, 1953. (S.I. 1953 No. 1136.)
Iron and Steel Prices (No. 4) Order, 1953. (S.I. 1953 No. 1137.) 5d.
Kitchen Waste (Revocation) Order, 1953. (S.I. 1953 No. 1119.)
Land Purchase (Ireland) (Calculation of Purchase Annuity) Rules, 1953. (S.I. 1953 No. 1117.)

Livestock (Control) (Revocation) Order, 1953. (S.I. 1953 No. 1131.)

London-Edinburgh-Thurso Trunk Road (Watten Diversion) Order, 1953. (S.I. 1953 No. 1127)

National Assistance (Charges for Accommodation) (Amendment) Regulations, 1953. (S.I. 1953 No. 1115.)

National Assistance (Charges for Accommodation) (Scotland) Amendment Regulations, 1953. (S.I. 1953 No. 1118 (S.94).)

National Insurance Act, 1953 (Commencement) Order, 1953. (S.I. 1953 No. 1141 (C.3).)

National Insurance (Industrial Injuries) (Colliery Workers Supplementary Scheme) Amendment Order, 1953. (S.I. 1953 No. 1138.) 1½d.

Pin, Hook and Eye, and Snap Fastener Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1953. (S.I. 1953 No. 1143.) 5d.

Representation of the People (Scotland) Regulations, 1953. (S.I. 1953 No. 1109 (S.93).) 5d.

Stopping up of Highways (Buckinghamshire) (No. 1) Order, 1953. (S.I. 1953 No. 1130.)

Stopping up of Highways (London) (No. 9) Order, 1953. (S.I. 1953 No. 1111.)

Stopping up of Highways (Middlesex) (No. 3) Order, 1953. (S.I. 1953 No. 1129.)

Stroma Harbour Order, 1953. (S.I. 1953 No. 1120 (S.95).) 6d.

Ware Potatoes Order, 1953. (S.I. 1953 No. 1124.) 1s. 2d.

Waste of Agricultural Foodstuff (Revocation) Order, 1953. (S.I. 1953 No. 1132.)

White Fish Subsidy (United Kingdom) Scheme, 1953. (S.I. 1953 No. 1139.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102–103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped, addressed envelope.

Will—Trustee Charging Clause—Includes Solicitor Trustee's Partner—Partner Attests Will—Effect of Clause

Q. A client of ours has made a will appointing *A*, one of our partners, to be an executor, which will contains the usual charging clause. By inadvertence the testator's signature to the will was witnessed by *A's* partner. It is clear that if the executor had attested the will the charging clause would have been inoperative as being the case of a legacy which would preclude the legatee from witnessing the will but we can find no authority which extends this disability to the partner of a legatee. It should be stated that the charging clause provides: "Any executor or trustee of this my will being a person engaged in any professional business shall be entitled to charge and be paid for all work done or time expended by him or by any partner of his in connection with the executorship or the trusts hereof including acts which a trustee not being in any professional business could have done personally."

A. In considering the present question it is necessary to apply two principles which do not cover the same ground. The first principle is that a solicitor-trustee cannot charge for professional services unless authorised by the settlement (*New* v. *Jones* (1883), 1 Mac. 89, 668), and this disability extends to his partner (*Re Corsellis* (1887), 34 Ch. D. 675) even if there is an agreement precluding the solicitor-trustee from taking any benefit in respect of that particular matter (*Re Gates* [1933] Ch. 913). The second principle is that as the authority under the settlement to make profit charges confers a bounty, a solicitor-trustee where the settlement is created by will loses the benefit of such a clause by attesting the will (*Re Pooley* (1888), 40 Ch. D.1). From this it would appear, although the point is admittedly not covered by authority, that the partner who attests the will loses the benefit of the charging clause whereas the partner who does not attest can take the benefit of that clause. In support of this view it may be noted that it is the rule requiring a charging clause which extends to partners and not that providing for the avoidance of gifts to attesting witnesses (Wills Act, 1837, s. 15). It is, therefore, our opinion that the partner who is appointed trustee can make profit charges in his own name but that none should be made directly by the firm or the attesting partner. We see, however, no reason why the partner who is permitted to charge should not share the profit costs with his partner under the terms of the partnership agreement.

Mortgage of House and Life Policy—Specific Devise of House—Fund Applicable for Redemption of Mortgage

Q. *A*, the owner of Blackacre, mortgages the same to *Z* Building Society and assigns to such society as additional security a policy on his own life for the amount of the mortgage advance. By his will *A* specifically devises Blackacre to *C*, and makes no direction or reference to the mortgage in any part of the will. At the date of *A's* death the full amount of the original advance remains owing to the building society, only interest thereon having been paid. (1) Does *C* take the property subject to the mortgage (i.e., must *C* repay to the executors the amount applied by the building society from the assurance moneys in redemption)? (2) If not, and *C* takes Blackacre free from the mortgage, are the executors entitled to claim from the building society any moneys payable by virtue of the assurance policy (e.g., bonuses) in excess of the amount due to the society as at the date of death? (3) If the answer to (2) above is "No," how should any such excess be dealt with?

A. (1) The precise set of circumstances enumerated in the question, although of frequent occurrence, does not appear to have come before the courts in any decided case. In the absence of any "contrary direction" within s. 35 of the Law of Property Act, 1925, appearing in the will or mortgage deed(s) it would appear that the devisee of Blackacre and the legatee of the policy must contribute to the redemption of the mortgage rateably according to the respective values of Blackacre and the policy. See *Re Major* [1914] 2 Ch. 278. (2) Any moneys payable under the policy which are not required for the rateable contribution to the redemption of the mortgage will be payable to the personal representatives. As, however, the building society will no doubt apply the greater part, if not the whole, of the policy moneys towards redemption, an appropriate adjustment will have to be made in the distribution account before the personal representatives assent to the devise. (3) In the absence of a specific bequest of the policy, the surplus will fall into and form part of the residuary estate of *A*.

Maintenance Order—Application for Revocation—Husband Now Permanently Resident Overseas

Q. By an order made by a court of summary jurisdiction in September, 1949, on the application of Mrs. *A*, founded on desertion, Mr. *A* was ordered to pay Mrs. *A* £1 per week in respect of her maintenance and £1 per week in respect of the maintenance of the child of the marriage. In 1952 Mrs. *A* obtained a divorce and remarried, and Mr. *A* now wishes to apply to the court for revocation of the maintenance order in respect of his wife. Mr. *A* is now permanently resident at Nairobi, Kenya. Apart from the initial difficulty of laying the information we think the only relevant matter Mr. *A* would give to the court would be evidence of his means. How can we institute proceedings on behalf of Mr. *A*?

A. The Summary Jurisdiction Act, 1848, s. 10 (now the Magistrates' Courts Rules, 1952, r. 4 (2)), allows a complaint to be laid by a solicitor, and, if the inquirers have authority from Mr. *A*, we think that the court will accept the laying of a complaint on his behalf by them. Presumably the variation of the order required is to cease payments to the former Mrs. *A*, but to continue them for the child. It is quite usual for a court to discharge an order in a wife's favour on her re-marriage, since she no longer requires support from her ex-husband, and it may well be that the court in this case will discharge the order, so far as the payments to the former Mrs. *A* are concerned, on evidence of her remarriage. Such evidence can be obtained in various ways, e.g., by a clerk to the inquirers asking her prior to the hearing if she has remarried and giving evidence himself then that she has said so, or even by calling her herself to say whether or not she has remarried (Evidence Amendment Act, 1853, s. 1). If the court accepts this, there

should be no need for any evidence of the means of Mr. *A*. We suggest that the clerk of the court be contacted first to make sure that he will accept a complaint laid on behalf of Mr. *A* and will not insist on any evidence, other than that mentioned above, being called. We suggest that the appropriate court to vary the order is the one which made it. If the course mentioned in the first paragraph is acceptable from the procedural point of view, but the magistrates do not in fact discharge the order, so far as the ex-wife is concerned, there is nothing to stop fresh proceedings being taken when more evidence is available.

NOTES AND NEWS

Honours and Appointments

Dr. F. A. ENEVER, principal assistant solicitor, Treasury, has been appointed deputy to the Treasury Solicitor.

Miscellaneous

THE SOLICITORS ACTS, 1932 TO 1941

On the 23rd July, 1953, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that WILLIAM PERCY WEBB, of 4 and 5 Verulam Buildings, Gray's Inn, London, be suspended from practice as a solicitor for a period of three years from the 1st August, 1953, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

DEVELOPMENT PLAN FOR THE COUNTY BOROUGH OF NEWPORT

The above development plan was on 23rd July, 1953, submitted to the Minister of Housing and Local Government for approval. The plan relates to land situate within the County Borough of Newport. A certified copy of the plan as submitted for approval is available for public inspection at Room 419, Borough Engineer's Department, Civic Centre, Newport, Mon., from 9 a.m. to 1 p.m. and from 2.30 p.m. to 5.30 p.m. (Saturdays 9 a.m. to 12 noon). Copies of the written statement may be purchased at 2s. 6d. each, and plans showing the proposals indicated on the town map may be purchased at £1 1s. each. Any objection or representation with reference to the plan may be sent in writing to The Under Secretary, Welsh Office, Ministry of Housing and Local Government, Cathays Park, Cardiff, before 1st October, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the town clerk and will then be entitled to receive notice of the eventual approval of the plan.

For the benefit of delegates to the annual conference of The Law Society, the Office Appliance and Business Equipment Trades Association, sponsors of the annual national Business Efficiency Exhibitions, is staging a miniature B.E.E. at Scarborough from 22nd February. Nearly thirty firms will be taking part in the Scarborough exhibition, which will be open at "The Spa" for three days.

Wills and Bequests

Mr. C. B. Pardoe, solicitor, clerk to Bridgwater Borough Justices, left £27,116 (£24,916 net).

Mr. H. W. Reeves, solicitor, of Old Broad Street, London, E.C.2, left £112,358 (£108,650 net).

Mr. L. C. Harvey, solicitor, of Spalding, left £99,024 (£85,954 net).

SOCIETIES

The SOLICITORS' ARTICLED CLERKS' SOCIETY announces the following programme for August:—

Sunday, 9th August: Ramble. Details from A. Braham (VIGilant 8251).

Wednesday, 12th August: Swimming. Meet at 5.45 outside Holborn Underground Station (Kingsway entrance). All details from Rosalind Stubbings (HOLborn 0256).

Thursday, 20th August: Tennis. Meet at 5.45 p.m. outside Holborn Underground Station by the Kingsway entrance. Further information from Eva Crawley (HOLborn 0043) after the 10th August.

Saturday and Sunday, 29th and 30th August: River Week-end. Details from Eva Crawley (HOLborn 0043) after the 10th August.

The Society is holding an autumn dance at the Royal Empire Society in Northumberland Avenue on Saturday, 26th September, 1953, at 7.30. Tickets (5s. single and 10s. double) are now available and may be obtained from G. Pearce (POPesgrove 2148, evenings), any member of the committee, or S.A.C.S., The Law Society's Hall, Chancery Lane, W.C.2.

CASES REPORTED IN VOL. 97

4th July to 8th August, 1953

For list of cases reported up to and including 27th June, see Interim Index

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